

**APPENDIX A: CRITERIA AND GUIDELINES FOR SUBMITTING
PERMIT APPLICATIONS**
to the
NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT
In Accordance With Chapter 60.5 Hawaii Administrative Rules

A. INTRODUCTION

Hawaii Administrative Rules, Chapter 60.5, Northwestern Hawaiian Islands Marine Refuge, provides rules for the establishment and management of the Marine Refuge in the Northwestern Hawaiian Islands. The authority to establish this Marine Refuge is Title 13, Department of Land and Natural Resource, Subtitle 4, Fisheries, Part II Marine Fisheries Management Areas and Chapter 188.53 Hawaii Revised Statutes. The Hawaii Department of Land and Natural Resources requires a permit for entry into State waters surrounding the Northwestern Hawaiian Islands. A permit is also required for any activity that has the possibility of negatively impacting marine resources (either through extraction or disturbance) of the area.

It is important to note that permits approved by the Board of Land and Natural Resources allow entry into State waters only (0-3nm), and do not confer any right of entry on to emergent land or adjacent waters in the Northwestern Hawaiian Islands.

The following guidelines provide information on Northwestern Hawaiian Islands Marine National Monument (“Monument”) permitting process and should be read in conjunction with Presidential Proclamation 8031, and the State NWHI Marine Refuge Administrative Rules Chapter 60.5 and the joint Monument permit instructions. Official copies of the Refuge rules can be obtained from the Division of Aquatic Resources, DLNR, 1151 Punchbowl Street, Room 330, Honolulu, Hawaii 96813, and/or are linked to the DLNR website: www.hawaii.gov/dlnr/dar

The following guidelines are intended to be congruent with, and not to supersede, guidelines or regulations established by the United States for and the Northwestern Hawaiian Islands Marine National Monument as well as other federal programs such as the National Wildlife Refuge Act, the Marine Mammal Protection Act, and the like.

In June 2006, President Bush created the NWHI Marine National Monument by signing Proclamation 8031. Prior to the designation of the Northwestern Hawaiian Islands as a Marine National Monument, the State of Hawaii established a Marine Refuge in the NWHI for the long-term conservation and protection of the unique coral reef ecosystems and the related marine resources and species, to ensure their conservation and natural character for present and future generations. The primary goal of the State Marine Refuge is resource preservation, with the specific objectives of preserving and protecting unique habitats, conserving biodiversity, restoring natural communities, and avoiding human impacts. As a part of the Monument, the State Marine Refuge is managed using the best available science and a precautionary management approach to resource protection to minimize risks of possible adverse effects on the regional ecosystem, its biodiversity or

its indigenous wildlife in this area, especially where data is limited. The Monument and the State Marine Refuge were established to support, promote and coordinate appropriate scientific research and assessment, and long-term monitoring of the NWHI resources, and the impacts of threats thereto from human and other activities, to help better understand, protect and conserve region.

All permits granted by the State of Hawaii and its federal partners shall be consistent with findings in Proclamation 8031, which established the NWHI Monument (for a complete copy please visit: <http://www.whitehouse.gov/news/releases/2006/06/print/20060615-18.html>)

Following are the findings:

1. The Secretaries may not issue any permit unless the Secretaries find:
 - a. The activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument;
 - b. The activity will be conducted in a manner compatible with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance monument resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects;
 - c. There is no practicable alternative to conducting the activity within the Monument;
 - d. The end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity;
 - e. The duration of the activity is no longer than necessary to achieve its stated purpose;
 - f. The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
 - g. The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
 - h. The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity;

i. The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of this Proclamation; and

j. There are no other factors that would make the issuance of a permit for the activity inappropriate.

It is also unlawful for any person to enter State waters in the Monument without a permit issued pursuant to Section 13-60.5-6. Joint permits for access to the State Marine Refuge will be approved by the Board of Land and Natural Resources ("the Board") in accordance with the criteria outlined in the Chapter 60.5 Hawaii Administrative Rules, these guidelines, and approvals by National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service (FWS).

The joint permit program ensures that such activities are carried out in a precautionary manner that safeguards the Monument ecosystems, ensuring their conservation and natural character which might be incidentally affected by scientific, educational, special (non-extractive purposes), or cultural activities.

The following criteria will apply to all types of permit applications:

- The activity must be non-commercial and will not involve the sale of any organism, byproduct, or material collected;
- Resources and samples are a public trust, not to be used for sale, patent, or bio-prospecting, or for obtaining patents or intellectual property rights;
- The activity must have demonstrable benefits to the preservation and management of the Northwestern Hawaiian Islands ecosystem;
- The activity must not gravely harm the ecological or biological systems, sites or resources of the NWHI, or do harm by virtue of the mode of transport to be employed for access.

Additionally, the following criteria must be demonstrated for Native Hawaiian access, and all applicants should consider these criteria in their application to access the NWHI:

- The activity should demonstrate benefits to the cultural and spiritual relationship of Native Hawaiians to the Northwestern Hawaiian Islands ecosystem;
- The activity should consider support for the perpetuation of traditional knowledge and ancestral connections of the Native Hawaiians to the Northwestern Hawaiian Islands.

B. PERMIT TYPES:

Permits to access the NWHI Monument in State waters may be issued to applicants under the following categories or types.

1. Research Permits

Research permits may be issued to researchers affiliated with government agencies, non-governmental organizations (NGOs), or accredited scientific institutions for appropriate scientific research activities within the Monument and State Marine Refuge. Permits for

entry to certain areas may be denied if it is determined that such locations would benefit from complete protection. Only research proposals that are designed to enhance scientific understanding of the Monument, investigate links between the Main Hawaiian Islands and the NWHI, gather data for global analyses of atmospheric and oceanographic processes, or improve resource management within the Monument will be considered.

Permits may also allow for researchers to collect species regardless of whether they are regulated species as authorized under Chapter 187A-6 Hawaii Revised Statutes.

2. Education Permits

Education permits for access to the Monument will be considered for activities that further the educational value of the Monument, enhance the understanding of NWHI ecosystems and resources, improve resource management, promote Native Hawaiian knowledge and values in relation to the Northwestern Hawaiian Islands, or assist in the development and implementation of enforcement and compliance strategies.

3. Conservation and Management Permits

Conservation and Management Permits may be issued for activities which assist in the conservation and management of the Monument. These may be issued to agencies such as the FWS, NOAA, and DLNR, among others.

Conservation and Management will cover activities not directly addressed by the Research, Education or Native Hawaiian Practice permits described herein, or activities related to the general management of Monument resources and/or users. Such special activities must provide a demonstrable benefit to the Monument, and may include: restoration or remediation of degraded or damaged resources; marine debris cleanup and removal activities of volunteer groups solicited by DLNR or its federal partners to assist; and resource management educational, scientific, and special ocean use activities, so as to prevent degradation of resources or diminishment of the natural character of the Monument.

The protection of historically significant wreck sites in the NWHI is a management priority, and unscheduled or unapproved visits to sensitive archaeological sites in the Monument or the State Marine Refuge are prohibited without a permit. Site locations are considered to be sensitive information, and not subject to public release (exempted from the Freedom of Information Act) when disclosure could pose a threat to the site. Visits to historically significant wrecks in the NWHI will only be conducted during approved scientific missions, when archaeologists can provide interpretation to interested researchers and crews, monitor any potential inadvertent site impacts, and assist ships and crews in placing emphasis on site protection and preservation protocols.

4. Native Hawaiian Practice Permits

The Chapter 60.5, Northwestern Hawaiian Islands Marine Refuge Rule intends to:

“allow Native Hawaiian cultural, subsistence and religious practices, and identification and coordination of Native Hawaiian interests, that are consistent with

applicable law and the long-term conservation and protection of the resources of the marine refuge.”

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Native Hawaiian Subsistence means the use of natural and heritage resources by Native Hawaiians for the purposes of perpetuating traditional knowledge; taking responsibility for and understanding how to *malama honua* (care for the earth); and strengthening cultural and spiritual connections to the NWHI. Resources extracted for Native Hawaiian subsistence will be used only for direct personal consumption while in the Monument and State Marine Refuge and cannot be exported from the refuge or sold. Allowable methods for subsistence fishing are limited to handline, pole-and-line or hand-held spear. Fishing by use of nets, SCUBA gear or spear guns is prohibited. Organisms allowed for subsistence use must be listed on an approved permit by name, method of capture to be used, specific site(s) of activity, and total numbers of each species to be sought at each site.

In keeping with the above, the Monument and State Marine Refuge may provide access permits to Native Hawaiians for subsistence, traditional and customary practices consistent with the long-term preservation of the Monument resources and in accordance with permit conditions. Permits may be denied for entry to certain areas if it is determined that such locations would benefit from complete protection.

5. Special Ocean Use Permits

Special Ocean Use Permits may be issued for an activity or use of the Monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure Monument resources. Examples of Special Ocean Use permits might be the filming of documentaries, or eco-tourism activities.

C. THE PERMIT APPLICATION PROCESS

Permit approval from the Board of Land and Natural Resources is required for every person who wishes to enter the NWHI State Marine Refuge waters of the Monument. Permitted activities include all scientific research, educational, and cultural activities, or other special activities as described above.

All applicants shall complete the Monument application form and refer to the application instructions, which can be found at <http://www.hawaiireef.noaa.gov/management/permits.html> .

D. THE PERMIT ASSESSMENT PROCESS

All permit applications will undergo identical review processes. Completed permit applications filed with the Monument will be evaluated as follows:

- NOAA, State of Hawaii, and U. S. Fish and Wildlife Service Permit Coordinators will initially review the application for completeness and compliance with application guidelines.
- The application will then be assessed by DLNR's NWHI Permit Review Committee.¹ The Permit Review Committee shall ensure the confidentiality of the application.
- Reviewers outside the Permit Review Committee may be asked for input if additional expertise is needed; all external reviewers may be asked to sign confidentiality agreements to protect the applicant's intellectual property rights.
- Incomplete applications will not be processed. If applications are incomplete, or if there is ambiguity in regard to a proposed project's goals and objectives, applicants will be contacted for clarification.

Completed permit applications filed with Monument will be initially evaluated and classified using the following review criteria:

- Relevance or importance of the proposed project to the NWHI Monument;
- How the project will benefit management of the NWHI Monument and the greater Northwestern Hawaiian Islands ecosystem, and/or Hawaiian archipelago;
- Whether the proposed project could be conducted outside the NWHI Monument;
- Scientific, educational, conservation, management, or cultural merits of the project;
- Potential cumulative impacts of the project;
- Whether the project will cause harm to the ecosystem;
- Whether the project will provide information that can assist in improving or facilitating direct management actions in either the NWHI or the MHI;
- Whether the applicant has had a previous permit revoked;
- Comments received from other relevant agencies involved in management of the NWHI.

A review form will be utilized in order to solicit reviewer comments and to generate a numerical ranking score for each permit. As such, permit applications will be directly comparable via numerical ranking. Compiled comments will be summarized and a numerical ranking shall be provided to the permit applicant.

Permit Decision

When the initial assessment process has been completed the application will be submitted to the Board of the Department of Land and Natural Resources for placement on the agenda of their next meeting. It will be posted on the DLNR website at the time of the Board Submittal for public review. There will be opportunity for public comment during the Board hearing process.

¹ Representatives such as the following may serve on the Committee: DLNR (DAR, DOFAW, OCCL, Historic Preservation); Office of Hawaiian Affairs; Department of Education; NOAA (NMSP, NMFS-Protected Species Program); USFWS; UH Cooperative Fisheries Research Unit, and Native Hawaiian advisors.

The submission of an application to the Monument shall not obligate the department to issue a permit nor constitute a right on the part of an applicant to receive a permit or to enter the NWHI Marine Refuge.

NOAA, State of Hawaii, or U. S. Fish and Wildlife staff will advise applicants on the outcome of their application and if approved, will issue a permit for a limited term (normally 6 months, but not longer than one year).

If a permit application is declined, the applicant will be notified of the reason(s) for denial and may be given an opportunity to re-apply, at the discretion of the Board.